

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

V.

LOREN JOHN JAY MEADE,

Defendant.

NO: 2:17-CR-0231-TOR-2

ORDER DENYING DEFENDANT'S  
MOTION UNDER 28 U.S.C. § 2255

BEFORE THE COURT is Defendant's Motion Under 28 U.S.C. § 2255 to

Vacate, Set Aside, or Correct Sentence. ECF No. 132. The Government filed its

response in opposition on September 11, 2020. ECF No. 138. Defendant did not

file a reply. Defendant is proceeding pro se. James A. Goeke appeared on behalf

of the government. This matter was submitted for hearing without oral argument.

The Court—having reviewed the motion, the record, and files therein—is fully

informed.

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1 **BACKGROUND**

2 On October 4, 2018, Loren John Jay Meade appeared before the Court and  
3 entered a plea of guilty to Count 1 of the Superseding Indictment filed on May 1,  
4 2018, charging him with Conspiracy to Distribute 50 Grams or More of Actual  
5 Methamphetamine, in violation of 21 U.S.C. §§ 841, 846. ECF Nos. 75, 76. The  
6 statutory penalty for this offense is not less than 10-years to life imprisonment, not  
7 less than 5-years to life term of supervised release, *inter alia*.

8 A Presentence Investigative Report (PSIR) was prepared in this case. It  
9 calculated Defendant's total offense level as 34, with a criminal history category  
10 VI, and an advisory guideline imprisonment range as 262 to 327 months. The  
11 PSIR found Defendant to be a career offender under the United States Sentencing  
12 Guidelines ("Guidelines") based upon his convictions for Possession with Intent to  
13 Manufacture or Deliver a controlled Substance- Methamphetamine, in Grant  
14 County Superior Court, Ephrata, WA cause number 09-1-00649-3, and  
15 Manufacture Methamphetamine, Grant County Superior Court, Ephrata, WA cause  
16 number 16-1-00408-6. PSIR ¶ 52.

17 According to the PSIR, absent Defendant's career offender designation,  
18 Defendant would have otherwise faced an offense level of 31 after acceptance of  
19 responsibility and a criminal history category score of V. Based on a criminal

1 history category of V and an adjusted base offense level of 31, Defendant would  
2 have faced an advisory sentencing range of 168 to 210 months incarceration.

3 The Court did not follow the advisory Guidelines, but rather, on May 15,  
4 2018, this Court sentenced Defendant to, *inter alia*, 148-months imprisonment,  
5 followed by a 5-year term of supervised release. ECF No. 128.

6 On June 29, 2020, Defendant filed the instant motion seeking resentencing.  
7 ECF No. 132. Essentially, Defendant contends that one of his prior convictions  
8 that qualified him as a career offender (cause number 16-1-00408-6) was dismissed  
9 earlier this year. ECF Nos. 132 at 4; 138-2. He contends that his career offender  
10 status is incorrect and he wants to be resentenced.

## 11 DISCUSSION

12 The Court finds that the issues raised do not require an evidentiary hearing.  
13 *See Rule 8, Rules—Section 2255 Proceedings.* The transcripts, records and  
14 materials filed in this proceeding adequately document the issues for resolution.

### 15 **A. Waiver of Rights to Appeal and File Any Post-Conviction Motion**

16 This Court finds Loren John Jay Meade waived his right to file the instant  
17 motion. Petitioner's plea agreement provides:

18 Defendant understands that he has a limited right to appeal or  
challenge the conviction and sentence imposed by the Court.

19 Defendant hereby expressly waives his right to appeal his conviction,  
any restitution order, any fine, and the sentence of incarceration the  
20 Court imposes. Defendant further expressly waives his right to file  
any post-conviction motion attacking his conviction and sentence,

1 including a motion pursuant to 28 U.S.C. § 2255, except one based  
2 upon ineffective assistance of counsel based on information not now  
3 known by Defendant and which, in the exercise of due diligence,  
4 could not be known by Defendant by the time the Court imposes the  
5 sentence.

6 ECF No. 76 at ¶ 17. The Court specifically informed Petitioner of this waiver  
7 provision at the time of his plea and he acknowledged he understood it. *See* Fed.  
8 R. Crim. P. 11(b)(1)(N). Mr. Meade does not base his motion on ineffective  
9 assistance of counsel. A defendant's waiver of his rights to appeal and to bring a  
10 collateral attack is generally enforced if "(1) the language of the waiver  
11 encompasses his right to appeal on the grounds raised, and (2) the waiver is  
12 knowingly and voluntarily made." *Davies v. Benov*, 856 F.3d 1243, 1246 (9th Cir.  
13 2017) (citation omitted). The exception to waiver contained in his plea agreement  
14 only includes motions based upon ineffective counsel "based on information not  
15 now known by Defendant and which, in the exercise of due diligence, could not be  
16 known by Defendant by the time the Court imposes the sentence." ECF No. 76 at  
17 ¶ 17. The subsequent dismissal of a predicate crime does not fit within the  
18 exception to Defendant's waiver of right to file any post-conviction motion. This  
19 § 2255 motion was waived, without exception. Therefore, the Court finds Mr.  
20 Meade knowingly and voluntarily waived his right to file this motion to vacate and  
accordingly, it must be denied.

1                   **B. Motion to Vacate, Set Aside or Correct Sentence**

2                   Even if Defendant did not knowingly and voluntarily waive his right to file  
3 this motion to vacate, his motion would be denied. Title 28 U.S.C. § 2255  
4 provides four grounds under which a federal court may grant relief to a federal  
5 prisoner who challenges a sentence of incarceration: (1) “that the sentence was  
6 imposed in violation of the Constitution or laws of the United States;” (2) “that the  
7 court was without jurisdiction to impose such sentence;” (3) “that the sentence was  
8 in excess of the maximum authorized by law;” and (4) that the sentence “is  
9 otherwise subject to collateral attack[.]” 28 U.S.C. § 2255(a). The Supreme Court  
10 has repeatedly interpreted this to encompass only errors that constitute a  
11 “fundamental defect which inherently results in a complete miscarriage of justice”  
12 or “an omission inconsistent with the rudimentary demands of fair procedure.”

13 *United States v. Timmreck*, 441 U.S. 780, 783 (1979) (quoting *Hill v. United*  
14 *States*, 368 U.S. 424, 428 (1962)). While the remedy is in this sense  
15 comprehensive, it does not encompass all claimed errors in conviction and  
16 sentencing. *United States v. Addonizio*, 442 U.S. 178, 185 (1979). Generally,  
17 motions pursuant to § 2255 must be filed within one year from “the date on which  
18 the judgment of conviction becomes final.” 28 U.S.C. § 2255(f)(1). However, the  
19 statute also authorizes filing within one year of “the date on which the facts

1 supporting the claim or claims presented could have been discovered through the  
2 exercise of due diligence.” *Id.* § 2255(f)(4).

3 In *Johnson v. United States*, the Supreme Court held that “the one year  
4 period begins when a petitioner receives notice of the order vacating the prior  
5 conviction, provided that he has sought it with due diligence in state court, after  
6 entry of judgment in the federal case with the enhanced sentence.” 544 U.S. 295,  
7 298 (2005). The fact of the state-court order sets “the 1-year period running only if  
8 petitioner has shown due diligence in seeking the order.” *Id.* at 302.

9 In *Johnson*, the defendant was sentenced under the Armed Career Criminal  
10 Act (ACCA), 18 U.S.C. § 924(e), which provides for a mandatory minimum 15-  
11 year sentence for possession of a firearm rather than “not more than 10-years”  
12 based upon three or more prior convictions for a “serious drug offense” or a  
13 “violent felony.” The underlying premise in *Johnson* was that the Supreme Court  
14 previously held “that a defendant given a sentence enhanced for a prior conviction  
15 is entitled to a reduction if the earlier conviction is vacated.” *Id.* at 303 (citing  
16 *Custis v. United States*, 511 U.S. 485 (1994); *Daniels v. United States*, 532 U.S.  
17 374 (2001)). The Supreme Court ultimately held that Johnson had not acted with  
18 due diligence by waiting more than three years to seek vacatur of his underlying  
19 state conviction. *Id.* at 311.

1 Both *Custis* and *Daniels* involved the statutory sentencing enhancement  
2 provided by the ACCA. Challenges to such sentences are cognizable under 28  
3 U.S.C. § 2255 if a predicate conviction is vacated because § 2255 authorizes  
4 claims that a sentence was imposed “in excess of the maximum authorized by  
5 law.”

6 Here, Defendant has not shown that his sentence was imposed “in excess of  
7 the maximum authorized by law.” Whether his prior state drug conviction is  
8 counted or not, Defendant faced the same penalty. Defendant’s statutory  
9 maximum and minimum penalties did not change upon the finding that he was a  
10 career offender as defined by the advisory Guidelines. The Guidelines are  
11 advisory, not binding on the Court’s sentencing discretion. *United States v.*  
12 *Booker*, 543 U.S. 220 (2005). This fact distinguishes the holdings in *Custis*,  
13 *Daniels*, and *Johnson* from Defendant’s circumstances.

14 Defendant had a valid expectation that his sentence would not be more than  
15 the statutory maximum, regardless of the advisory Guideline calculation.  
16 Defendant did not have a legally enforceable right to be sentenced within a certain  
17 Guideline range, as the range is advisory and the court must also consider the  
18 § 3553(a) factors. *See Irizarry v. United States*, 553 U.S. 708, 713-14 (2008)  
19 (stating any expectation subject to due process protection that a criminal defendant  
20 would receive a sentence within the presumptively applicable Guideline range did

1 not survive *United States v. Booker*). Nonconstitutional sentencing errors that have  
2 not been raised on direct appeal have been waived and generally may not be  
3 reviewed by way of 28 U.S.C. § 2255. *United States v. Schlesinger*, 49 F.3d 483,  
4 485 (9th Cir. 1994). Computational errors in a presentence report do not give rise  
5 to a constitutional issue. *United States v. McMullen*, 98 F.3d 1155, 1157 (9th Cir.  
6 1996). Neither the Ninth Circuit Court of Appeals nor the Supreme Court has  
7 extended the rationale of *Custis*, *Daniels*, or *Johnson* to apply to advisory  
8 Guideline calculations for cases on collateral review.

9 Accordingly, Defendant has not established a constitutional violation or  
10 other right to relief.

11 **C. Certificate of Appealability**

12 A petitioner seeking post-conviction relief may appeal a district court’s  
13 dismissal of the court’s final order in a proceeding under 28 U.S.C. § 2255 only  
14 after obtaining a certificate of appealability (“COA”) from a district or circuit  
15 judge. 28 U.S.C. § 2253(c)(1)(B). A COA may issue only where the applicant has  
16 made “a substantial showing of the denial of a constitutional right.” *See id.*  
17 § 2253(c)(2). To satisfy this standard, the applicant must “show that reasonable  
18 jurists could debate whether (or, for that matter, agree that) the petition should  
19 have been resolved in a different manner or that the issues presented were adequate

1 to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S.  
2 322, 336 (2003) (internal quotation marks and citation omitted).

3 The Court concludes that Defendant is not entitled to a COA because he has  
4 not demonstrated that jurists of reason could disagree with this Court’s resolution  
5 or conclude the issues presented deserve encouragement to proceed further.

6 **ACCORDINGLY, IT IS HEREBY ORDERED:**

7 1. Defendant’s Motion to Vacate, Set Aside, or Correct Sentence under 28

8 U.S.C. § 2255 (ECF No. 132) is **DENIED**.

9 2. The Court further certifies that there is no basis upon which to issue a

10 certificate of appealability and the same is **DENIED**. 28 U.S.C. § 2253(c);

11 Fed. R. App. P. 22(b).

12 The District Court Executive is hereby directed to enter this Order and  
13 furnish copies to the parties. This file and the corresponding civil file (2:20-CV-  
14 0237-TOR) shall be **CLOSED**.

15 **DATED** October 8, 2020.



16 A handwritten signature in blue ink that reads "Thomas O. Rice".  
17 THOMAS O. RICE  
United States District Judge  
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